IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 2753 OF 2005
IN
APPEAL LODG. NO. 941 OF 2005
IN
ARBITRATION NO. 451 OF 2004

Vimal G. Jain.] .. Applicant

Versus

Vertex Finance Services Pvt.Ltd. & Anr.] .. Respondent

Mr. Tushar Goradia for applicant.

Mr. Simi M. Purohit i/b M/s. Purohit & Co. for respondent.

CORAM: R.M. LODHA &
ANOOP V. MOHTA, JJ.

DATED: 20TH JANUARY, 2006

P.C. :

. The appellant-applicant filed an Appeal on 20th September, 2005 challenging the order dated 10th January, 2005 passed by the learned Single Judge dismissing the Arbitration Petition under Section 34 of the Arbitration & Conciliation Act, 1996. Since the Appeal suffers from delay of more than seven months, by means of the present Notice of Motion, the appellant prays for condonation of delay.

2. In the Affidavit in support of the Notice of Motion, the appellant has stated that immediately on the order dated 10th January, 2005 being passed he requested his Advocate to apply for certified copy of the order as he intended to challenge the said order. He stated that on enquiries his Advocate informed him that certified copy was not received and that as and when the certified copy was received, he would let him know and the Appeal could be filed. It is further stated in the Affidavit that the respondent executed the Award recently and levied attachment of his properties. Then he contacted his Advocate who informed him that inadvertently the application for certified copy of the impugned order could not be filed. It was thereafter that his Advocate made an application for certified copy on 16th September, 2005 and upon receipt thereof, the present Appeal has been filed.

3. We are afraid the Affidavit does not disclose the sufficient cause justifying condonation of delay of more than seven months. In the Affidavit the applicant has not disclosed the name of his Advocate. The date on which he requested his Advocate to apply for certified copy is also not stated. The Affidavit is also silent about the dates on which the enquiries were made by him with the Advocate. It appears to us that the applicant

thought that by setting up such cause, the Court would be lenient in condoning the delay as the Court always feels that mistake of the advocate should not harm the litigant. We are afraid, the Affidavit is too vague to be accepted. The delay of seven months remains unexplained. No sufficient cause is shown.

4. We accordingly dismiss the Notice of Motion.

[R.M. LODHA, J.]

[ANOOP V. MOHTA, J.]

[srpasha@hc]